

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

METABOLIC RESEARCH, INC.,

Plaintiff,

vs.

SCOTT J. FARRELL, et al.,

Defendants.

Case No. 2:09-cv-02453-JCM-PAL

**REPORT OF FINDINGS AND
RECOMMENDATION**

This matter is before the court on Plaintiff Metabolic Research, Inc.'s failure to comply with this court's Orders (Dkt. ##65, 66) and Order to Show Cause (Dkt. #68).

On September 26, 2012, the court granted attorney Beverly Salhanick's Motion to Withdraw as Attorney (Dkt. #63). Because a corporation cannot appear except through counsel, the court allowed Plaintiff until October 8, 2012, in which to retain new counsel. *See* Order (Dkt. #66). The Order directed the Clerk of the Court to serve Plaintiff with the Order at the last known address provided by Ms. Salhanick. *Id.* The Order further advised Plaintiff that its failure to timely comply with the Order "may result in a recommendation to the District Judge for sanctions, including case-dispositive sanctions." *Id.* Plaintiff did not comply with the Order, and the Order was returned as undeliverable by the United States Postal Service. *See* Returned Mail (Dkt. #67).

On October 22, 2012, the court entered an Order to Show Cause (Dkt. #68) based on Plaintiff's failure to comply with the court's previous Order. The court directed Plaintiff to show cause in writing no later than November 8, 2012, why it had not complied with the court's Order. *See* Order to Show Cause (Dkt. #68). The Order also reminded Plaintiff of its obligation to keep the court apprised of its current address. *Id.* Plaintiff did not respond to the Order to Show Cause or request an extension of time in which to do so. The Order to Show Cause warned Plaintiff that "[f]ailure to timely respond to this Order to Show Cause will result in a recommendation to the district judge that Plaintiff's

1 *Complaint be dismissed.*” *Id.* (emphasis in original). Additionally, Plaintiff has not updated the court
2 with its current mailing address, and the court’s docket reflects that the Order to Show Cause was
3 returned to the court by the United States Postal Service as undeliverable. *See* Returned Mail (Dkt.
4 #69).

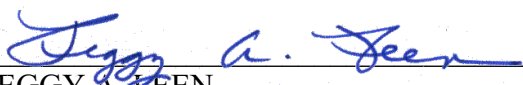
5 Finally, on September 20, 2012, the district judge entered an Order (Dkt. #65) approving the
6 parties’ Stipulation (Dkt. #61) to allow Plaintiff an extension of time to respond to Defendants’ Motion
7 for Judgment (Dkt. #58). The court approved the parties’ stipulation permitting Plaintiff to file a
8 response to the Motion for Judgment within fifteen days of the court’s ruling on Ms. Salhanick’s
9 Motion to Withdraw. *See* Order (Dkt. #65). The order granting Ms Salhanik’s motion to withdraw was
10 entered September 26, 2012. Plaintiff’s response was therefore due October 12, 2012. Plaintiff has not
11 complied with its stipulated agreement or the court’s Order approving the Stipulation by responding to
12 Defendants’ Motion for Judgment.

13 Plaintiff’s failure to comply with the court’s Orders and Order to Show Cause and its failure to
14 keep the court apprised of its current address has interfered with the court’s ability to hear this case,
15 delayed litigation, disrupted the court’s timely management of its docket, wasted judicial resources, and
16 threatened the integrity of the court’s orders and the orderly administration of justice. Sanctions less
17 drastic than dismissal are unavailable because Plaintiff has refused to comply with the court’s Orders,
18 Order to Show Cause, and the Local Rules of Practice.

19 Accordingly,

20 **IT IS RECOMMENDED** that Plaintiff Metabolic Research, Inc.’s Complaint be DISMISSED.

21 Dated this 14th day of November, 2012.

22
23 
24 PEGGY A. LEEN
25 UNITED STATES MAGISTRATE JUDGE

26 **NOTICE**

27 These findings and recommendations are submitted to the United States District Judge assigned
28 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being

1 served with these findings and recommendations, any party may file written objections with the court.
2 Pursuant to Local Rule of Practice IB 3-2(a), any party wishing to object to the findings and
3 recommendations of a magistrate judge shall file and serve *specific written objections* together with
4 points and authorities in support of those objections, within fourteen days of the date of service of the
5 findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s
6 Findings and Recommendations.” The parties are advised that failure to file objections within the
7 specified time may waive the right to appeal the District Court’s Order. *Martinez v. Ylst*, 951 F.2d 1153
8 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject
9 to the page limitations found in LR 7-4.